FILE COPY

No. 533

IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

TORAO TAKAHASHI, *Petitioner*,

v.

FISH AND GAME COMMISSION, LEE F. PAYNE, as Chairman thereof, W. B. WILLIAMS, HARVEY E. HASTAIN, and WILLIAM SILVA, as members thereof.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

BRIEF FOR PETITIONER

A. L. WIRIN,
DEAN ACHESON,
CHARLES A. HORSKY,
ERNEST W. JENNES,
Counsel for Petitioner.

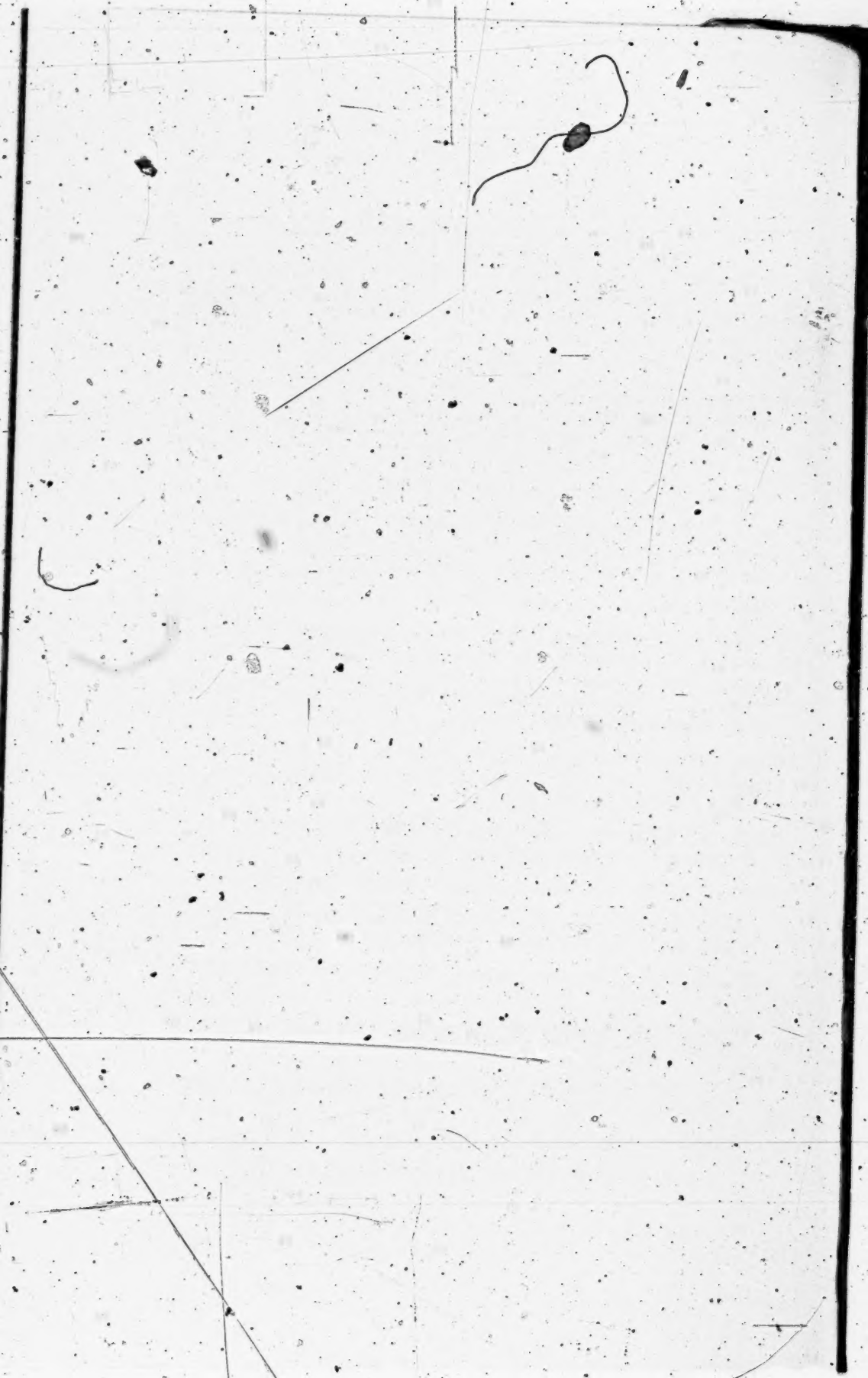
FRED OKRAND,
Of Counsel.

March 31, 1948.

INDEX

CITATIONS

Cases:



IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 533.

TORAO TAKAHASHI, *Petitioner,*

v.

FISH AND GAME COMMISSION, LEE F. PAYNE, as Chairman thereof, W. B. WILLIAMS, HARVEY E. HASTAIN, and WILLIAM SILVA, as members thereof.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

BRIEF FOR PETITIONER

OPINIONS BELOW

The memorandum of opinion in the Superior Court (R. 11-18) is not reported. The opinions in the Supreme Court of California (Opinion, R. 30; Dissenting Opinion, R. 45) are reported in 30 Advance California Reports 723, 185 P. 2d 805.

JURISDICTION

The judgment of the Supreme Court of California was entered October 17, 1947 (R. 54). It ordered that the judgments of the Superior Court "be and the same are hereby reversed with directions to enter judgment for the commission and its members." (*Ibid*). The constitutional issues here presented were urged in the trial court (R. 2, 11-18), where they were sustained (R. 6, 7, 21), and in the court below (R. 30-53) where they were overruled (R. 54). Petition for a writ of certiorari was filed on January 16, 1948, and was granted on March 15, 1948. The jurisdiction of this Court rests upon Section 237(b) of the Judicial Code, as amended.

QUESTIONS PRESENTED

Section 990 of the Fish and Game Code of California prohibits the issuance of commercial fishing licenses to aliens ineligible to citizenship. Petitioner is a Japanese alien, denied a license because of the statute. The questions presented are:

1. Whether Section 990 on its face deprives petitioner, an alien of the Japanese race, of the equal protection of the laws and due process of law in violation of the Fourteenth Amendment to the Constitution.

2. Whether Section 990, in its purpose and effect, is a racist statute, directed solely against Japanese aliens, and thus a denial to petitioner of the equal protection of the laws and of due process of law.

3. Whether Section 990 is invalid because of conflict with federal authority over, and federal standards with respect to, discrimination against aliens.

STATUTE INVOLVED

The statutory provision involved is Section 990 of the Fish and Game Code of California, as amended (Stats. 1945, Ch. 181), which reads as follows:

> "990. Every person who uses or operates or assists in using or operating any boat, net, trap, line, or other appliance to take fish, mollusks or crustaceans for profit, or who brings or causes fish, mollusks or crustaceans to be brought ashore at any point in the State for the purpose of selling the same in a fresh state shall procure a commercial fishing license.
>
> "A commercial fishing license may be issued to any person other than a person ineligible to citizenship. A commercial fishing license may be issued to a corporation only if said corporation is authorized to do business in this State, if none of the officers or directors thereof are persons ineligible to citizenship, and if less than the majority of each class of stockholders thereof are persons ineligible to citizenship."

STATEMENT

On June 7, 1946, Torao Takahashi filed an amended petition for a writ of mandamus in the Superior Court of the State of California for Los Angeles County (R. 1, 6). The respondents were, and are in this Court, the California Fish and Game Commission and the chairman and members thereof (R. 2). The allegations of the amended petition may be summarized as follows:

Takahashi was born in Japan, but was a resident of Los Angeles, California from 1907 until 1942, when he was evacuated by military order from California along with others of Japanese ancestry. Between 1915 and the time of his evacuation he was engaged in the occupation of commercial fishing on the high seas. During that period he received annually, upon application, a

commercial fishing license from the respondent Fish and Game Commission (R. 1, 6).

In October, 1945, upon the termination of the military exclusion orders, Takahashi returned to California to resume his former occupation. He is in all respects qualified to obtain a commercial fishing license except that he is of Japanese ancestry. Respondents have refused to issue him such a license because of the provisions of Section 990 of the Fish and Game Code, *supra*, and because he is of Japanese ancestry. Takahashi has no other occupation except that of commercial fishing, and since his return to California he has been unable to secure other employment.[1]

Respondents filed both an answer and a general demurrer (R. 3-4). The demurrer was overruled and the trial court, finding the only issue to be one of law (R. 12), ordered the peremptory writ of mandate to issue, directing the Commission to issue petitioner a commercial fishing license authorizing him to bring ashore in California for sale in a fresh state fish caught by him in the high seas (R. 7). Subsequently, the judgment was amended so as to require respondents to issue a general commercial fishing license without limitation (R. 21).[2]

---

[1] Allegations that Takahashi's two sons and two sons-in-law had served in the United States Army, three of them overseas, and that one had received a Purple Heart and an Oak Leaf Cluster for service in the Air Corps overseas (R. 1-2), were struck by the Superior Court (R. 6) at the motion of respondents (R. 4-5). Struck, also, was the allegation that Takahashi had arrived in the United States legally and was a lawful resident of Los Angeles (R. 1, 4-5, 6).

[2] The Supreme Court of California held that the amended judgment was void because entered after the trial court had lost jurisdiction of the cause even though respondents consented (R. 33-34). However, it rested its judgment of reversal, not upon any technical

The decisions below. The Superior Court based its judgment for petitioner on two distinct grounds. First, it held that to deny a resident of a state, solely because he is an ineligible alien, a commercial fishing license is to deny the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States. This denial, the court said, could not be justified as the regulation by the State of the disposition of its own property, but was rather an unlawful limitation of the right to pursue a private and lawful occupation (R. 16). Second, it held that the legislative history of this California statute makes clear that its language is but a "thin veil used to conceal" a "purpose . . . . too transparent" to eliminate Japanese aliens from the right to a commercial fishing license (R. 16-17). Such discrimination, "patently hostile", it found to be without reasonable basis (R. 17-18).

The Supreme Court of California, three of the seven justices dissenting, reversed the Superior Court. The majority was of the view that the Legislature has almost unlimited powers to regulate hunting and fishing

---

consideration of the propriety of the specific relief granted, but upon a denial of petitioner's claim under the Fourteenth Amendment. Respondents argue that if, for technical reasons the statute does not authorize the specific form of license ordered by the trial court, the petitioner fails (Respondents' Brief in Opposition, pp. 7-9). But this Court is not concerned with the mechanics of licensing petitioner to fish in the waters in which he is entitled to fish, where the license is issued under a statute which purports to prevent petitioner from fishing in any waters whatsoever. That is a problem for the courts of California, and may be presented to them under a mandate from this Court remanding the case for further proceedings not inconsistent with the Court's opinion. Compare *Sipuel* v. *Board of Regents of University of Oklahoma*, October Term, 1947, No. 369, decided by this Court January 12, 1948; *Fisher* (*Sipuel*) v. *Hurst*, October Term, 1947, No. 325 Misc., decided February 16, 1948.

within its own borders and to deny the right to engage in these activities to other than its own citizens as it sees fit (R. 36-38). Moreover, relying on the decision of this Court in *Terrace* v. *Thompson*, 263 U. S. 197, and on its own decision in *People* v. *Oyama*, 173 P. 2d 794 (1946), reversed U. S. Sup. Ct., Oct. Term, No. 44, Jan. 19, 1948, which concerned prohibitions against ownership of land by classes of aliens, the court took the position that the ineligible alien classification is a reasonable one for conservation purposes (R. 38). The majority of the court did not feel that it had been established that the statute was racial in intent or application (R. 39-42). Finally, the court held that, to the extent that the statute applies to the bringing ashore of fish caught beyond the coastal waters, it is reasonably calculated to render effective the State's power of control over the fish supply within its territorial waters (R. 42-45).

The dissenting opinion of Justice Carter (with whom Chief Justice Gibson and Justice Traynor concurred) saw the issue primarily as whether an ineligible alien resident "may be excluded from engaging in a gainful occupation—from working—making a living" (R. 45). Under *Truax* v. *Raich*, 239 U. S. 33, and *Yick Wo* v. *Hopkins*, 118 U. S. 356, they believed that there could be but one answer. They could find no reasonable basis for denying resident aliens the right to make a livelihood from commercial fishing and no conceivable basis for discriminating between classes of aliens (R. 46-50). "Assuming the soundness of . . . the alien land law cases" (R. 53), the minority distinguished them from the instant case as being related to the devolution of real property and not to earning a living in a common occupation (R. 52-53). Finally, "highly persuasive arguments" may be made that the legislation in question

is actually aimed solely against Japanese and is hence invalid as racist in purpose (R. 53).

On October 17, 1947, the Supreme Court of California entered its judgment, that the judgments of the Superior Court "be and the same are hereby reversed with directions to enter judgment for the commission and its members" (R. 54).

The petition for writ of certiorari was filed on January 16, 1948, and was granted on March 15, 1948.

SPECIFICATION OF ERRORS TO BE URGED

The Supreme Court of California erred:

1. In failing and refusing to hold that Section 990 of the Fish and Game Code of California, on its face, constituted a denial to petitioner, an alien of the Japanese race, of the equal protection of the laws and of due process of law in violation of the Fourteenth Amendment to the Constitution.

2. In failing and refusing to hold that Section 990 is, in its purpose and in its necessary effect, a racist statute directed against aliens of Japanese origin, and thus a denial to them, including petitioner, of the equal protection of the laws and of due process of law in violation of the Fourteenth Amendment.

3. In failing and refusing to hold that Section 990 is invalid because of conflict with federal authority over, and federal standards with respect to, discrimination against aliens.

4. In reversing the decision of the Superior Court.

SUMMARY OF ARGUMENT

I

Petitioner, a resident of California, asserts a right to fish in the ocean, land his catch in California, and thus earn a living. In common with other alien Japanese,

he is now denied that right because of ineligibility to citizenship, inasmuch as such ineligibles cannot obtain a license to use a fishing boat in waters subject to California jurisdiction, or to land fish in California. Petitioner seeks to fish in the open sea, where a substantial if not a major portion of the California fish catch is taken. The doctrine that a state may preserve for its own citizens fish in which it has a proprietary interest is, therefore, inapplicable. Nor can the doctrine be invoked on the theory of state ownership of coastal waters and the fish therein. *United States* v. *California*, 332 U. S. 19. California's legislative authority over offshore fishing springs from the special interest of coastal communities in ocean fishing as a source of livelihood, and the national interest in fish as food and industrial material. The issue is not, therefore, a state's power to limit access to property which it owns, but is whether California can lawfully deny petitioner, because of race or alienage, an ordinary means of livelihood.

II

Petitioner's interest in earning a living by fishing gives rise to a right which California must afford the protection of equal laws. A state statute which discriminates against aliens in the right to pursue ordinary vocations violates the Fourteenth Amendment. *Truax* v. *Raich*, 239 U. S. 33. Even as to fish subject to California proprietorship, it would be a denial of equal protection to discriminate against alien Japanese in a commercial fishery, open to all other persons, regardless of citizenship or residence, and irrespective of the ultimate disposition within or without the State, of fish caught. California does not seek to preserve fish landed in California for its own citizens, but is willing and anxious to have such fish shipped inland in interstate

commerce. Having so permitted the taking of fish for export, California has relaxed any hold based on proprietorship, and must act in accordance with the commerce and equal protection clauses of the Constitution. *Foster Packing Co.* v. *Haydel*, 278 U. S. 1; *Pavel* v. *Pattison*, 24 F. Supp. 915 (W. D. La. 1938).

III

The proscription of commercial fishing licenses to alien Japanese cannot be sustained as a conservation measure. California first prohibited the licensing of "alien Japanese" by a 1943 amendment to the Fish and Game Code. Stats. 1943, ch. 1100. In 1945, the phrase "alien Japanese" was changed to "ineligible to citizenship," a step advised by a California Senate committee in the hope of preserving the constitutionality of the exclusion of alien Japanese from the fisheries. Stats. 1945, ch. 181. The 1943 and 1945 amendments were adopted under the influence of war-born anti-Japanese prejudice, and represent unadulterated racism. The alien Japanese is the butt of both amendments, for the commercial fisherman who is not eligible to citizenship, other than an alien Japanese, is virtually unknown in California. No evidence can be presented of a bona fide purpose to reduce the number of commercial fishermen so as to conserve fish. In fact, the 1942 evacuation of Japanese did not cause a substantial or lasting reduction in the number of licensed commercial fishermen, nor did the California authorities desire that it should. As of 1945, California discouraged any reduction in the size of the catch, and reported the California fishery in a healthy condition.

IV

The Federal Government exercises supreme control over foreign affairs and aliens. Federal law or treaty

for the regulation of aliens or for the protection of aliens against discrimination excludes inconsistent state laws. *Hines* v. *Davidowitz*, 312 U. S. 52. Federal occupation of the field begins with the constitutional guaranties and the Civil Rights Act of 1866, 8 U. S. C. Sec. 41. More recently, the Federal Government by international agreement has agreed to take joint and separate action in cooperation with other nations to remove discriminations because of such factors as race or nationality. United Nations Charter, Arts. 55, 56; Draft Declaration on Human Rights, United Nations Commission on Human Rights; Inter-American Conference on Problems of War and Peace, Mexico City, Resolution 41; Draft Declaration of the International Rights and Duties of Man, Articles XIV and XVIII before Ninth International Conference of American States, Bogotá, Colombia, March 30, 1948.

ARGUMENT

I

PETITIONER ASSERTS A RIGHT AND DOES NOT SEEK A "PRIVILEGE" FROM THE STATE OF CALIFORNIA

Petitioner asserts his right to engage in the ancient occupation of fishing in the ocean and bringing his catch to shore. He makes no claim to take fish in which the State of California has or can rightly claim a proprietary interest.

His petition asserts that for a quarter of a century, before the outbreak of the last war, he was a commercial fisherman at Los Angeles. Annually he applied for and received a commercial fishing license. When he returned in 1945 from his enforced evacuation from California, he attempted to resume his former occupation of commercial fishing on the high seas. To do this under the law of California he needed a license to use

and assist in using a boat and equipment for fishing and to land his catch in California. This had been true before his departure, but in his absence the law had been changed, and by its terms he was made ineligible to obtain a license because, being an alien of Japanese ancestry, he was not eligible to citizenship, and to all such ineligibles licenses were denied.

The law did not tell him directly that he could not fish in the high seas. It did tell him, quite as affirmatively that he could not, within three miles of the California coast, use or assist in using a boat or any of the equipment necessary in fishing and that he could not land his catch in California. So he was cut off from his occupation.

The fact that the petitioner seeks to fish in the open ocean and is prevented from doing this is not a technical nor accidental fact peculiar to his situation. All the Japanese licensed commercial fishermen of California were for many years before the war Pacific Ocean fishermen and fished out of the four ports of Los Angeles, San Diego, Monterey and San Francisco.[1]

The effect of the legislation of 1943 and 1945—and, as we shall show below, its purpose—was to prevent them from earning their livelihood in this historic manner.

We stress this fact because it is important to understand that the petitioner and the other Japanese alien fishermen, like all California commercial fishermen, earned their living from a fishery only a portion of which—and the smaller portion of which—lies within

---

[1] Division of Fish and Game of California, Bureau of Commercial Fisheries, Fish Bulletin No. 49, The Commercial Fish Catch of California for the Year 1935, p. 144; Fish Bulletin No. 57 for the Years 1936-1939, Inclusive, p. 19; Fish Bulletin No. 58 for the Year 1940, p. 25; Fish Bulletin No. 59 for the Years 1941 and 1942, p. 24.

three miles of the shore. What Californians, with pardonable pride, refer to as "the California fisheries" extends over waters of multifarious jurisdiction. As the California Fish and Game Commission once put it (*Fish Bulletin No. 15*, 1929, p. 9):

> "Although one fishery, it is arbitrarily cut into four parts by two imaginary lines drawn on the map. The boundary between the United States and Mexico when extended westward divides the area horizontally into northern and southern portions, while the three mile limit running vertically cuts a three-mile strip off the eastern edge of the fishing area. *The fishermen, the fish, and the ocean currents pay little attention to these lines*, and the only excuse for drawing them is in such cases as involve the levying of duty or determining state and national jurisdiction." (Italics ours.)

Unfortunately, adequate statistics have never been collected as to the proportion of the catch attributable to each of these "imaginary" areas. A rough idea may be obtained, as to some of the more important and valuable species of fish, by leafing through California Fish and Game publications.

California Marine Fisheries officials noted that the range of the California tuna boats had by 1934 made "Costa Rica, Panama and the Galapagos Islands . . . the common fishing grounds" (*Fish Bulletin No. 44 for the Years 1930-1934, Inclusive*, p. 41; *Fish Bulletin No. 49 for the Year 1935*, p. 26), and publicly regretted wartime restrictions on operating tuna boats south of 10° N. latitude, a line which runs through San Jose, Costa Rica. *State of California, Department of Natural Resources, Thirty-seventh Biennial Report of the Division of Fish and Game for the Years 1940-1942*, p. 49. Conservation studies of the sardine and mackerel fisheries have involved the release of California-tagged fish

off the coasts of Mexico and Oregon, and cooperation with the fisheries departments of Canada, Washington, and Oregon, and with the United States Fish and Wildlife Service. *Id.*, at 48, 49; *Thirty-eighth Biennial Report for the years 1942-1944*, at 37, 38.

Fish Bulletin No. 48, Fishing Locations for the California Sardine, 1928-1936, pp. 9-11, reported that during the period covered 52 per cent of the sardine catch for the Monterey area occurred within three miles of shore, while 36 per cent of the San Pedro (Los Angeles) catch was attributable to coastal waters. For the San Francisco and San Diego areas "scanty data" was said to "suggest that the fishing for large sardines from these two ports is carried on at greater distances from shore." It was estimated that "off Orange and San Diego counties . . . only about 20 per cent of the catches for adult sardines are made within the three-mile limit."

These samplings from the Fish and Game Commission publications, sketchy though they be, indicate that a substantial, if not a major, portion of the California catch originates outside coastal waters.

We stress these facts pertaining to the "California" fishing grounds frequented by Japanese alien commercial fishermen because it enables this Court, in considering the facts of this case, and also the broader questions of the impact and purpose of the legislation in question, to lay to one side arguments and cases which have much occupied both the Supreme Court of California and counsel for the respondents in this case. These arguments and cases deal with the powers of the several states over fish and wild animals in which the state has a proprietary interest.

It is argued, and has been held, in some cases that, in legislating as a proprietor disposing of property which it holds in ownership for the benefit of the whole

people, the state may grant favors or impose disabilities which it could not do in legislating on matters as to which persons within its borders have legal rights protected by constitutional restraints.

The terms used are that persons within a state have no "right" to reduce to possession animals and fish which are the property of the state; that this is a "privilege" which the state may grant or refuse free from customary constitutional inhibitions. Happily the considerations which underlie these cases are not present here, and we need not be detained by words and concepts which, if not metaphysical, are at least confusing in considering the simpler issues presented here.

We assume that it will not be argued that the State of California has any proprietary right or ownership in fish in the high seas. Indeed, after the decision of this Court in *United States* v. *California*, 332 U. S. 19, no valid argument can be advanced that the State of California has ownership in any fish in coastal waters beyond the low water mark. But wholly apart from that case, it is plain that "the California fisheries" are ocean fisheries extending far beyond coastal waters, that many fishermen work entirely outside the territorial jurisdiction of the State, whatever claims are made for it, and that the habits of the fish and the nature of the ocean currents make the "boundary" of the three-mile limit no boundary at all. Under these circumstances, the conception that the State of California "owns" these fish is little short of absurd. This is not to say that California does not have a vital interest in and broad legislative authority over its own citizens and inhabitants—and perhaps others—who may fish in these waters (see *Skiriotes* v. *Florida*, 313 U. S. 69), or over those who may seek to land fish in its territory (see *Bayside Fish Co.* v. *Gentry*, 297 U. S. 422); but this authority does not spring from proprie-

tary interests. While the State may legislate, it must do so within limits of established constitutional restraints and in a manner not inconsistent with national action.

Indeed, the interest of the State in the fish in coastal waters of the high seas is well indicated, and in a manner significant to the issues of this case, in the Proclamation of the President of the United States of September 28, 1945. There, referring to the fisheries resources contiguous to the coasts of the United States, the President pointed out that "such fishery resources have a special importance to coastal communities as a source of livelihood and to the nation as a food and industrial resource." 59 Stat. 885.

The petitioner asserts his right of access to these resources "as a source of livelihood," in the President's words.

The question presented here is not the limit to which the State may go in disposing of property which it owns, but whether the State has lawfully denied to the petitioner, because of his race and alienage, an ordinary, and his accustomed, means of earning a livelihood.

The trial court saw clearly that such was the issue presented. It said (R. 17-18):

> "Under each and both, [i.e., Section 990 of the Fish and Game Code of California, as amended in 1943 and 1945] alien Japanese are denied a right to a license to catch fish on the high seas for profit, and to bring them to shore for the purpose of selling the same in a fresh state. As was stated in the Abe case, supra,[1] this discrimination constitutes an

[1]The court here refers to *Abe* v. *Fish and Game Commission*, 9 Cal. App. 2d 300; 49 P. 2d 608 (1935); petition for hearing denied by Supreme Court of California, November 25, 1935. This case also arose

unequal exaction and a greater burden upon the persons of the class named than that imposed upon others in the same calling and under the same conditions, and amounts to prohibition. This discrimination, patently hostile, is not based upon a reasonable ground of classification and, to that extent, the section is in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, wherein and whereby a state is forbidden to deny to any person within its jurisdiction the equal protection of the laws. In respect to the right to fish upon the high seas for profit, and to bring the catch to the California shore for the purpose of selling the same in a fresh state, the alien Japanese, resident of California, though ineligible to citizenship in the United States, is entitled to the same equal protection of the laws that is accorded to all other persons engaged in the same business."

The trial court here, as did the District Court of Appeal in the case cited in the text, found the principles governing the decision squarely decided by this Court in the case of *Truax* v. *Raich*, 239 U. S. 33. We turn therefore to a consideration of that case.

---

under section 990 of the Fish and Game Code, and also the plaintiff was the owner of a fishing boat, which for two years he had used in taking fish from ocean waters outside the State of California and beyond the jurisdiction thereof and in bringing the fish ashore within the State of California for the purpose of selling them in a fresh state. At the time the case arose, the statute did not contain the prohibition against the issuance of licenses to persons not eligible to citizenship, but did limit the issuance of licenses to persons who had continuously resided in the United States for a period of one year. The plaintiff's crew had not resided in the United States for that period and he was denied a license. The District Court of Appeal held the provision unconstitutional, as not a reasonable ground of classification and in violation of the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

II

The Statute Which Denied Petitioner the Right to Earn His Living by Commercial Fishing Solely Because of His Alienage Denied Him the Equal Protection of the Laws Guaranteed by the Fourteenth Amendment

We have pointed out that the petitioner here seeks to fish on the high seas and not in any area where the State of California can properly claim a proprietary interest in the fishery resources, in order to point out the irrelevance of much of the argument which has taken place in this case. But this is not the fundamental and decisive fact here. The fundamental fact is that an inhabitant of California has been denied the right to earn his living in a common and proper occupation solely because he is an alien, and, even more, because he is an alien of a particular race.

Petitioner is and was a fisherman by trade. He applied for a *commercial* fishing license. He was not a sportsman seeking pleasure in the pastime of hunting or fishing, whose interest in this pursuit might not rise to the dignity of a right secured by the Constitution of the United States. But his interest in earning his living gives rise to a right; and, in dealing with that right, the State of California must give petitioner, as a person within its jurisdiction, the equal protection of the laws, or, as this Court said, putting it in another way, "the protection of equal laws." *Yick Wo* v. *Hopkins*, 118 U. S. 356, 369. It cannot discriminate against him because he is an alien; still less can it discriminate against him because he is an alien of Japanese ancestry. To all persons within its borders, citizens and aliens alike, the protection of their right to earn a living in a common and proper calling must be equal.

This statement, and the principles which underlie it, have nowhere been more fully and forcefully stated than by this Court in *Truax* v. *Raich*, 239 U. S. 33, 39, 41-42; 43:

> "The question then is whether the act assailed [a state statute requiring employers to employ a certain percentage of citizens in proportion to aliens] is repugnant to the Fourteenth Amendment. Upon the allegations of the bill, it must be assumed that the complainant, a native of Austria [an alien], has been admitted to the United States under the Federal law. He was thus admitted with the privilege of entering and abiding in the United States, and hence of entering and *abiding in any State in the Union.* (See *Gegiow* v. *Uhl Commissioner*, decided October 25, 1915, *ante* p. 3.) *Being lawfully an inhabitant of Arizona, the complainant is entitled under the Fourteenth Amendment to the equal protection of its laws.* The description—'any person within its jurisdiction'—as it has frequently been held, includes aliens. 'These provisions,' said the Court in *Yick Wo* v. *Hopkins*, 118 U. S. 356, 369 (referring to the due process and equal protection clauses of the Amendment), 'are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws.' See also *Wong Wing* v. *United States*, 163 U. S. 228, 242; *United States* v. *Wong Kim Ark*, 169 U. S. 649, 695. . . .
>
> "It is sought to justify this act as an exercise of the power of the State to make reasonable classifications in legislating to promote the health, safety, morals and welfare of those within its jurisdiction. But this admitted authority, with the broad range of legislative discretion that it implies, *does not go so far as to make it possible for the State to deny to lawful inhabitants, because of their race or*

nationality, the ordinary means of earning a livelihood. It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the Amendment to secure. *Butchers' Union Co.* v. *Crescent City Co.*, 111 U. S. 746, 762; *Barbier* v. *Connolly*, 113 U. S. 27, 31; *Yick Wo* v. *Hopkins, supra; Allgeyer* v. *Louisiana*, 165 U. S. 578, 589, 590; *Coppage* v. *Kansas*, 236 U. S. 1, 14. If this could be refused solely upon the ground of race or nationality, the prohibition of the denial to any person of the equal protection of the laws would be a barren form of words. It is no answer to say, as it is argued, that the act proceeds upon the assumption that 'the employment of aliens unless restrained was a peril to the public welfare.' The discrimination against aliens in the wide range of employments to which the act relates is made an end in itself and thus the authority to deny to aliens, upon the mere fact of their alienage, the right to obtain support in the ordinary fields of labor is necessarily involved. It must also be said that reasonable classification implies action consistent with the legitimate interests of the State, and it will not be disputed that these cannot be so broadly conceived as to bring them into hostility to exclusive Federal power. The authority to control immigration—to admit or exclude aliens—is vested solely in the Federal Government. *Fong Yue Ting* v. *United States*, 149 U. S. 698, 713. The assertion of an authority to deny to aliens the opportunity of earning a livelihood when lawfully admitted to the State would be tantamount to the assertion of the right to deny them entrance and abode, for in ordinary cases they cannot live where they cannot work. And, if such a policy were permissible, the practical result would be that those lawfully admitted to the country under the authority of the acts of Congress, instead of enjoying in a substan-

tial sense and in their full scope the privileges conferred by the admission would be segregated in such of the States as chose to offer hospitality. . . .

"The discrimination is against aliens as such in competition with citizens in the described range of enterprises and in our opinion it clearly falls under the condemnation of the fundamental law." (Italics ours.)

Such are the principles which are applicable here.

We submit that they would be equally applicable if the petitioner sought, as he does not in this case, to earn his livelihood through labor in a commercial fishery wholly within the territory or jurisdiction of California and was denied the right to do so solely because he was an alien of Japanese ancestry.

Whatever right the state may have to reserve for its own citizens the taking and exclusive enjoyment of fish or animals in which it has a proprietary interest, once it determines not to do that but to throw open to all—citizens, non-residents, aliens resident and non-resident, alike—the right to earn a livelihood by commercial fishing, disposing of the fish where they choose, it cannot lawfully discriminate against one small group of aliens because of their race. Furthermore, as we show below, it is a discrimination bearing no relation to any object of conservation and not put forward for that purpose. It is a discrimination solely against Japanese, as such, and designed to prevent them from earning a living from the sea, just as other laws of the same State were designed to prevent them from earning a living from the soil. See concurring opinions of Mr. Justice Black and Mr. Justice Murphy, *Oyama* v. *California*, October Term, 1947, No. 44, decided Jan. 19, 1948, 68 S. Ct. 269, at 276, 277. The end objective was that

they should leave the State. *Estate of Yano,* 188 Cal. 645, 658, 206 Pac. 995, 1001 (1922).

In quoting from the opinion in *Truax* v. *Raich, supra,* we omitted a portion—much relied on by counsel for respondents (Respondents' Brief in Opposition, p. 18)—Mr. Chief Justice Hughes said (pp. 39-40):

> "The discrimination defined by the act does not pertain to the regulation or distribution of the public domain, or of the common property or resources of the people of the State, the enjoyment of which may be limited to its citizens as against both aliens and the citizens of other States. Thus in *McCready* v. *Virginia,* 94 U. S. 391, 396, the restriction to the citizens of Virginia of the right to plant oysters in one of its rivers was sustained upon the ground that the regulation related to the common property of the citizens of the State, and an analogous principle was involved in *Patsone* v. *Pennsylvania,* 232 U. S. 138, 145, 146, where the discrimination against aliens upheld by the court had for its object the protection of wild game within the States with respect to which it was said that the State could exercise its preserving power for the benefit of its own citizens if it pleased. The case now presented is not within these decisions, or within those relating to the devolution of real property. (*Hauenstein* v. *Lynham,* 100 U. S. 483; *Blythe* v. *Hinckley,* 180 U. S. 333, 341, 342); and it should be added that the act is not limited to persons who are engaged on public work or receive the benefit of public moneys. The discrimination here involved is imposed upon the conduct of ordinary private enterprise."

From this respondents reason that the principles of *Truax* v. *Raich* would not be applicable here if petitioner sought to take fish in which California had a proprietary interest. Nothing said by Chief Justice

Hughes, or in any of the decisions of this Court which he cited and those subsequent, warrants such a belief. Indeed, both *Truax* v. *Raich, supra,* and other decisions warrant the opposite conclusion.

The Chief Justice said, and cited *McCready* v. *Virginia,* 94 U. S. 391, as authority, that a state might reserve for its citizens, excluding non-residents and aliens, the use and enjoyment of the common property and resources of the state. But California does not seek to do this. It permits commercial fishing by anyone except Japanese. Nor does the State, as in *Geer* v. *Connecticut,* 161 U. S. 519, permit the taking of game and fish but prohibit their transportation out of the State. California is anxious and willing to have the products of its fisheries sent anywhere in the world. The Chief Justice, relying on *Patsone* v. *Pennsylvania,* 232 U. S. 138, referred to the power of a state to prohibit aliens as a class from killing game and possessing the arms suitable for this purpose where there was reasonable ground for supposing that this class constituted a particular conservation problem. But California does not seek to do this, and, as we shall point out below, the discrimination against one small class among aliens is not based or claimed to be based on any conservation purpose. It is sheer arbitrary discrimination, based on dislike and nothing more.

This Court in *Foster Packing Co.* v. *Haydel,* 278 U. S. 1, and *Johnson* v. *Haydel,* 278 U. S. 16, dealt with a not dissimilar situation. There the principle was announced that, while a state may, if it chooses, retain the products of its fisheries within its borders, it may not adopt the opposite course of permitting them to be sold in interstate commerce and yet attempt, by reliance on its proprietary interest, to place restrictions upon inter-

state commerce not ordinarily permitted under the Constitution.

In the *Foster Packing Co.* case, the State, while permitting the taking of shrimp in its waters and their sale abroad, attempted to prevent this sale unless the heads and tails were first removed. The parts had no value, the purpose and effect of the provision being solely to require the canning of the shrimp in Louisiana instead of in Mississippi. The Court declared the restriction invalid.

> "As the representative of its people, the State might have retained the shrimp for consumption and use therein. But, in direct opposition to conservation for intrastate use, this enactment permits all parts of the shrimp to be shipped and sold outside the State. The purpose is not to retain the shrimp for the use of the people of Louisiana; it is to favor the canning of the meat and the manufacture of bran in Louisiana by withholding raw and unshelled shrimp from the Biloxi plants." 278 U. S. at 13.

When the State "relaxed its hold," by permitting the taking and exportation of the shrimp, the Constitutional limitations applied, and the State could not rely upon claim of ownership to achieve purposes which that concept was not created to permit, and which were forbidden by the Constitution.

The same principle has been applied in cases arising under the equal protection provision of the Fourteenth Amendment. In *Pavel* v. *Pattison,* 24 F. Supp. 915 (W. D. La. 1938), Louisiana, while permitting the taking of furbearing animals and alligators and the shipment of their skins abroad, attempted to prevent a non-resident owner of marshland, useful for no other purpose than trapping, and his non-resident lessee from

trapping on the land. A three-judge court found that the principle of *Foster Packing Co.* v. *Haydel, supra,* was applicable and enjoined the interference, as a denial of the equal protection of the laws. When the State attempted the same result by increasing the license fee for non-residents to such an amount as would make trapping unprofitable, the same court for the same reason declared the act unconstitutional. *Pavel* v. *Richard,* 28 F. Supp. 992 (W. D. La. 1938).

The doctrine of these cases is plainly sound and finds many analogies in constitutional law, where concepts may not be pressed to "a drily logical extreme," thereby defeating fundamental objectives of the law. Mr. Justice Holmes for the Court in *Noble State Bank* v. *Haskell,* 219 U. S. 104 at 110. The doctrine of property held in common ownership for the people of a state is the legal justification and explanation of the power of the states to protect and conserve their resources of fish and game and, if desired, to reserve them for their own citizens. It is not a doctrine which, when neither of these ends is sought, can be used to set aside constitutional limitations imposed upon the states for the equal protection of all persons within their jurisdiction.

III

The Amendments of 1943 and 1945 to Section 990 of the Fish and Game Code Are Not Supportable As Conservation Measures

From the time of its enactment in 1909 until 1933 the law of California regulating commercial fishing and requiring licenses did not contain any qualification upon those who might apply for and receive such licenses. See Stats. 1909, p. 302; Stats. 1917, p. 686. In 1933

the Legislature imposed a qualification requiring residence within the United States continuously for one year prior to the application. Stats. 1933 chs. 73, 969. This qualification as noted above (p. 15, footnote), was declared unconstitutional by the courts of California.

In 1942 persons of Japanese ancestry were evacuated by military order from California. Included in this exodus were all the alien Japanese fishermen. These consisted of 699 persons who, as noted above, fished out of the four ports of San Francisco, Monterey, Los Angeles, and San Diego. In 1943 the statute was amended to read (Stats. 1943, ch. 1100):

> "A commercial fishing license may be issued to any person other than an alien Japanese."

This 1943 amendment was a fresh expression of the anti-Japanese hysteria that has erupted periodically in California since the turn of the century. The same session of the California Legislature approved measures to re-invigorate the State's notorious Alien Land Law, which had been but lackadaisically enforced during the less prejudiced thirties; further enactments in this legislative pogrom against Japanese landowners were adopted by the 1945 California Legislature. Stats. 1943, chs. 1003, 1059; Stats. 1945, chs. 1129, 1136; see Comment, 56 *Yale L. J.* 1017, 1018, 1024-25 (1947). The history of the California anti-Japanese movement, its aims, and its method of operation as a protection of the public welfare, has been too recently before this Court to require extended comment here. See the concurring opinions of Mr. Justice Black and Mr. Justice Murphy, *Oyama* v. *California*, October Term, 1947, decided Jan. 19, 1948, No. 44, 68 S. Ct. 269 at 276, 277.

In 1945 further consideration was given to Section 990 of the Fish and Game Code, as amended in 1943, by

a California Senate Committee studying various anti-Japanese measures. *Report of the Senate Fact-Finding Committee on Japanese Resettlement, May 1, 1945.*[1] That Committee reported as follows on the subject of "Japanese Fishing Boats" (pp. 5-6):

> "The committee gave little consideration to the problems of the use of fishing vessels on our coast owned and operated by Japanese, since this matter seems to have previously been covered by legislation. The committee, however, feels that there is danger of the present statute being declared unconstitutional, on the grounds of discrimination, since it is directed against alien Japanese. It is believed that this legal question can probably be eliminated by an amendment which has been proposed to the bill which would make it apply to any alien who is ineligible to citizenship. The committee has introduced Senate Bill 413 to make this change in the statute."[2]

A few months later, Section 990 was revised to read as it reads today, with the phrase "any person other than a person ineligible to citizenship" substituted for the phrase "any person other than an alien Japanese," as recommended by the Senate Committee. Stats. 1945, ch. 181.

---

[1] A copy of this Report has been lodged with the Clerk in connection with *Oyama* v. *California*, October Term 1947, No. 44, decided Jan. 19, 1948.

[2] Respondents' Brief in Opposition, p. 33, sought to diminish the importance of this passage because, *inter alia*, "the report . . . dealt primarily with the alien land laws and the Tule Lake riot." To petitioner, this is one of the most damning facts about the whole matter—that amendment to exclude persons "ineligible to citizenship" was proposed, not by a committee concerned with conservation of fish, but by one interested in the Japanese as a group.

The trial court, after setting out these facts, concluded (R. 17):

> "As it was commonly known to the legislators of 1945 that Japanese were the only aliens ineligible to citizenship who engaged in commercial fishing in ocean waters bordering on California, and as the Court must take judicial notice of the same fact, it becomes manifest that in enacting the present version of Section 990, the Legislature intended thereby to eliminate alien Japanese from those entitled to a commercial fishing license by means of description rather than by name. To all intents and purposes and in effect the provision in the 1943 and 1945 amendments are the same, the thin veil used to conceal a purpose being too transparent."

The dissenting justices in the Supreme Court found the arguments leading to this conclusion "highly persuasive," (R. 53) but the majority asked: "Can it be said with certainty that Japanese were the only aliens ineligible to citizenship who engaged in commercial fishing in ocean waters bordering on California?" They found certainty lacking, since the "Fish Bulletins" compiled by the State, while stating the nativity of practically all the licensees, grouped some scattered few under "all others," and the official statistician stated that she did not know, without examining the individual applications, whether licenses had been granted to persons ineligible to citizenship other than Japanese (R. 40, 27). However, the writer of a recent article has checked the records and found that in the fifteen years from 1930 through 1944 at one time or another only three fishermen ineligible to citizenship—as the federal law stood in 1945—other than Japanese were licensed—two Koreans and a Guamese. In 1944, prior to the

amendment of 1945, there were none but Japanese. Howard Goldstein in a "Survey" of "California's Anti-Alien Fishing Law," *Pacific Citizen*, Vol. 26, No. 3, Jan. 17, 1948, p. 2. It thus appears that what was common knowledge in California was, indeed, knowledge.

So the majority of the Supreme Court of California concluded that the amendment which changed the proscription against Japanese—after a report which expressed fear that this might be declared unconstitutional—to one against persons ineligible to citizenship was not aimed against the Japanese but was a conservation measure. They said (R. 40):

> "By the amendment, it may be inferred, the legislature desired to extend conservation measures and did not rewrite the statute for the purpose of discriminating against alien Japanese."

It found the method chosen admirably suited to the purpose (R. 38):

> "Obviously, if the legislature determines that some reduction in the number of persons eligible to hunt and fish is desirable, it is logical and fair that aliens ineligible to citizenship shall be the first group to be denied the privilege of doing so."

Of course, the case before the court did not have to do with hunting and fishing, governed by other provisions of the statute, but with commercial fishing. Is it obvious that the Legislature wished to reduce the number of persons engaged in this occupation? Is there any evidence that the Legislature or the executive departments ever sought or desired to promote any conservation measure in the commercial fisheries by reducing the number of persons engaged in it? Would it be logical and fair, if this were desired, to single out this

particular group, or indeed any group defined with total irrelevance to the conservation problem involved? Last of all, would it be within the legislative power of the State to do so?

In the years preceding the evacuation of Japanese from California in 1942, while the number of commercial fishermen had been increasing, the number of alien Japanese in this occupation had been decreasing. The figures are:[1]

License Year	Total Commercial Fishermen	Alien Japanese	Other Aliens
1935-36	6007	860	not available
1939-40	8724	807	1580
1940-41	9047	759	1496
1941-42	9344	699	1577

In 1942 approximately a thousand fishermen were eliminated by evacution or the refusal of licenses to certain alien enemies, and others joined the armed services. Yet the total reduction was small and temporary. The effect of the elimination of the Japanese upon the numbers fishing out of the four ports from which all Japanese fished was negligible. The figures are:[2]

License Year	Total Fishermen	Number in Four Ports	Increase or Decrease from 1941 in Four Ports
1941-42	9344	7757	
1942-43	9043	7691	—66
1943-44	11803	10403	+2646
1944-45	10871	9102	+1345
1945-46	11747	9444	+1687

[1] Fish Bulletin No. 49, *supra*, p. 143; Fish Bulletin No. 57, p. 18; Fish Bulletin No. 58, p. 25; Fish Bulletin No. 59, p. 23.

[2] Fish Bulletin No. 59, *supra*, pp. 24-25; Thirty-Eighth Biennial Report, *supra*, p. 35; Thirty-Ninth Biennial Report, p. 103.

Commenting on the operations of these years the Bureau of Marine Fisheries of California said:

"In the following license year, 1942-1943, many new men entered our fisheries to partially offset the number of fishermen who joined the armed services and the aliens who were not permitted to continue fishing. Approximately 700 Japanese and 300 Italians were denied fishing privileges but the total number of fishermen decreased only 300. There was an increase of more than 800 in the total native born fishermen during this second license period." *Fish Bulletin No. 59, supra,* p. 21.

"The total landings in these two years [1942 and 1943] were 416,172,000 pounds behind the landings in the previous biennium, but the total value of the fishery products produced was the highest ever recorded for this State. Shortage of labor resulted in a decrease of 29 per cent in the production of canned fish. . . .

"It is of interest to note that while the number of fishermen dropped in the 1942-43 season, from the previous season, the number of commercial fishing licenses sold in the 1943-44 season was the largest ever recorded for this State. The decrease in 1942-43 was due in part to the loss of the Japanese fishermen who were barred from operations off the coast. These were only partially replaced by the other nationalities.

"Interest in the lucrative albacore and soupfin shark fisheries, which were successful in 1943, as well as high prices of all fish, encouraged large numbers of people to enter the industry. However, commercial licenses were also bought by some solely to qualify for the Coast Guard passes required for movement of boats in ocean waters. An unknown number of licenses must be classified as temporary, and do not represent a permanent increase in the number of commercial fishermen in the State." *Thirty-Eighth Biennial Report, supra,* pp. 33, 34-35.

It is plain from these reports that the State authorities had no interest in reducing, or desire to reduce, the number of commercial fishermen; and that they did not reduce the number of fishermen. It is plain also that the elimination of the 700 Japanese alien fishermen did not have, and could not have, any conceivable relation to any conservation problem. One may read the reports from one end to the other without finding a word associating these two ideas.

Indeed, the worries of the California fish authorities at the time of the enactment of these provisions excluding Japanese fishermen were of quite a different nature. The Bureau of Marine Fisheries discusses these in its Report dated July 1, 1944. *Thirty-Eighth Biennial Report, supra,* pp. 35-36.

The landings of sardines in California had accounted for nearly five-sixths of all fish landings in California by weight and for nearly half by value. Following the outbreak of the war, the sardine fishing fleet had been reduced by the loss of numbers of the boats to the Army and Navy. Those owning the remaining boats wished to ensure their own catch of fish and consequently both prevented the sale of fish to other purchasers and limited the catch per boat so that they should not exceed the capacity of their own plants. This led to prompt intervention of the California authorities. They forbade limitation of catch per boat and they undertook to set up a system of allocation. When this action was attacked in the courts, first the War Production Board and then a Coordinator of Fisheries established in the Department of the Interior of the United States took over authority. Imposition of limitation on boat catches was prohibited and other steps were taken "to obtain the greatest possible production" *Id.*, p. 36.

Turning to the condition of the fisheries, the Report continues:

> "Analyses have been continued of the fisherman's catch per unit of effort expended. These studies, together with the age readings and length measurements, indicate that at present the sardine population is in a comparatively healthly condition due to good spawning survival in 1937 and 1939. These two year-classes have been the main support of the fishery for the past three or four seasons." *Thirty-Eighth Biennial Report, supra,* p. 37.

We submit, therefore, that the amendments of 1943 and 1945 were not, and were not intended to be, conservation measures. At the time they were proposed and adopted both the state and federal authorities were seeking, not to reduce, but to increase the production from these marine fisheries. Not only was no attempt made to reduce the number of ocean fishermen, but the authorities looked with favor upon their increase. The amendments were adopted solely and patently to exclude Japanese alien fishermen as such. This action was a denial of the equal protection of the laws, forbidden by the Fourteenth Amendment.

IV

The Amendment of 1945 to Section 990 of the Fish and Game Code Is Void Because Contrary to Standards Which the Nation Has Established in a Field Where Its Authority Is Supreme

It is beyond question that the Federal Government has full and supreme authority over the conduct of affairs with foreign nations and that its enactments by treaty or law aimed at preventing injurious discriminations against aliens exclude inconsistent state

laws. *Hines* v. *Davidowitz*, 312 U. S. 52; see also concurring opinions of Mr. Justice Black and Mr. Justice Murphy in *Oyama* v. *California*, October Term, 1947, No. 44, decided Jan. 19, 1948.

Federal occupation of the field begins with the constitutional guarantees of freedom to pursue any legitimate occupation without government discrimination because of race or color. It continues with the provisions of the Civil Rights Act of 1866, the portion of which relevant here is contained in Section 41 of Title 8, U. S. C.:

> "All persons within the jurisdiction of the United States shall have the same right in every State and territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

This statute was one of the grounds relied on by the Federal Circuit Court in California for declaring unconstitutional a statute forbidding any corporation to employ any Chinese or Mongolian, the court pointing out that the right to follow a lawful calling was property—and, indeed, in many cases the only property—of the persons against whom this discrimination was directed. *In re Parrott*, 1 Fed. 481, 508 *et seq.* (C. C. Cal. 1880).

More recently the Federal Government has taken further action in this field. By Articles 55 and 56 of the United Nations Charter, this Government has pledged itself to take joint and separate action in cooperation with the Organization to achieve (59 Stat. 1035, 1045-46):

"c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."

By action of the General Assembly of the United Nations, the United Nations Commission on Human Rights was established under the Economic and Social Council and directed to prepare an international bill of human rights. The General Assembly is to take action upon this bill of rights at its meeting in September, 1948 On November 30, 1947, the United States representative, Mrs. Franklin D. Roosevelt, by direction of her Government put forward the United States proposal in the form of a declaration of human rights.[1] Articles 9 and 10 of that draft are as follows:

"ARTICLE 9

"Everyone has the right to a decent living; to work and advance his well-being; to health, education and social security. There shall be equal opportunity for all to participate in the economic and cultural life of the community.

"ARTICLE 10

"Everyone, everywhere in the world, is entitled to the human rights and fundamental freedoms set forth in this Declaration without distinction as to race, sex, language, or religion. The full exercise of these rights requires recognition of the rights of others and protection by law of the freedom, general welfare and security of all." *Department of*

[1] For a summary of the organization and activities of the Human Rights Commission, see Mrs. Franklin D. Roosevelt's article, "The Promise of Human Rights," Foreign Affairs, Vol. 26, No. 3, April, 1948, p. 470.

State Bulletin, Vol. XVII, No. 440, Dec. 7, 1947, pp. 1075-6.

At its second session in Geneva in December, 1947, the United Nations Commission on Human Rights approved Draft Articles for an International Declaration on Human Rights and an International Convention on Human Rights. *Economic and Social Council Official Records, Third Year, Sixth Session, Supp. No. 1, Report of the Commission on Human Rights, United Nations Document E/600*, Dec. 17, 1947. Article 23 of the draft declaration provides (p. 17):

"1. Every one has the right to work.

"2. The State has a duty to take such measures as may be within its power to ensure that all persons ordinarily resident in its territory have an opportunity for useful work. . ."

Article 20 of the draft convention provides as follows (p. 28):

"Every person shall be entitled to the rights and freedoms set forth in this Covenant, without distinction as to race (which includes colour), sex, language, religion, political or other opinion, property status, or national or social origin. Every person, regardless of office or status, shall be entitled to equal protection under the law against any arbitrary discrimination or against any incitement to such discrimination in violation of this Covenant."

At the same time that the Federal Government is joining with other nations in this endeavor through the United Nations, it is taking similar action in cooperation with the Republics of the Western Hemisphere.

Resolution 41 of the Inter-American Conference on Problems of War and Peace held at Mexico City, February 21-March 8, 1945, provided:

"Whereas: World peace cannot be consolidated until men are able to exercise their basic rights without distinction as to race or religion, the Inter-American Conference on Problems of War and Peace resolves:

"1. To reaffirm the principle, recognized by all the American States, of equality of rights and opportunities for all men, regardless of race or religion.

"2. To recommend that the Governments of the American Republics, without jeopardizing freedom of expression, either oral or written, make every effort to prevent in their respective countries all acts which may provoke discrimination among individuals because of race or religion." *Report of the Delegation of the U. S. A. to the Inter-American Conference on Problems of War and Peace,* Mexico City, February 21-March 8, 1945, at p. 109.

Resolution 40 of the Mexico City Conference directed the Inter-American Juridical Committee to prepare a draft declaration of the international rights and duties of man for consideration by the Ninth International Conference of American States. This is the Conference to be held at Bogotá beginning March 30, 1948. In accordance with that resolution such a draft declaration has been prepared. The articles of that draft, so far as they are relevant here, are as follows:

"ARTICLE XIV

"RIGHT TO WORK

"Every person has the right to work as a means of supporting himself and of contributing to the support of his family.

"This right includes the right to choose freely a vocation, in so far as the opportunities of work available make this possible, as well as the right to transfer from one employment to another and to move from one place of employment to another. . . .

"ARTICLE XVIII

"RIGHT TO EQUALITY BEFORE THE LAW

"All persons shall be equal before the law. There shall be no privileged classes of any kind whatsoever.

"It is the duty of the state to respect the rights of all persons subject to its jurisdiction, affording them equal protection in the enjoyment of their rights, substantive and procedural alike.

"The restrictions imposed upon fundamental rights must be such only as are required by the maintenance of public order; and they must be general in character and applicable to all persons within the same class." *Project of Declaration of the International Rights and Duties of Man,* Formulated by the Inter-American Juridical Committee for Consideration by the Ninth International Conference of American States, Pan American Union, CB-7-E, Washington, 1948, pp. 8, 10.

The consideration of this declaration is on the Agenda of the Ninth International Conference of American States. *Ninth International Conference of American States, Bogotá, Colombia, March 30, 1948, Program and Regulations,* Pan American Union, CB-1-E, Washington, 1948, p. 6.

Thus it will be seen that the Federal Government has legislated domestically, and, in the international field, has twice agreed with other nations to eliminate within its borders the very discrimination on account of race which the amendment of 1945 to the California Fish

and Game Code, if valid, would perpetuate. This amendment must, therefore, fall in the face of this national action.

CONCLUSION

Wherefore, the decision below should be reversed.

Respectfully submitted,

A. L. WIRIN,
DEAN ACHESON,
CHARLES A. HORSKY,
ERNEST W. JENNES,
Counsel for Petitioner.

FRED OKRAND,
Of Counsel.

March 31, 1948.